

## REMARKS

### **Introduction:**

In accordance with the foregoing, claims 32-35 have been amended. No new matter has been added. Therefore, claims 1-46 are pending and reconsideration is respectfully requested.

### **Rejections under 35 U.S.C. § 112, second paragraph:**

On page 2 of the Office Action, claims 32-35 were rejected under 35 U.S.C. § 112, second paragraph. In response, applicant notes that these claims have been amended to recite “an outer layer adjacent to the compressible, resilient layer” which is supported throughout the specification and particularly in, at least, FIG. 7. Thus, the rejections of claims 32-35 are overcome.

### **Rejections under 35 U.S.C. § 102(b):**

On page 3 of the Office Action, claims 1, 2, 5-7, 15, 16, 23, 24, 29 and 42 were rejected under 35 U.S.C. § 102(b) in view of Garneau, US Patent 6,393,618 (hereinafter the ‘618 patent). These rejections are traversed.

Briefly, regarding the rejection of claim 1, it is noted that claim 1 recites a multi-layer seat pad for a cyclist garment, comprising an inner layer for contacting the cyclist, an outer layer for affixing to the garment, and a compressible, resilient middle layer disposed between the outer and inner layers. The outer layer covers less than all of the inner layer. These features are not taught by the ‘618 patent.

Nevertheless, in rejecting this claim, the Examiner alleges that the ‘618 patent discloses an inner layer 40 and an outer layer 42 and further alleges that the outer layer covers less than all of the inner layer. Applicant notes that the Examiner has not provided any evidence for this allegation and that, as discussed below, the allegation is clearly factually incorrect.

Calling attention to the claimed phrase, “the outer layer covers less than all of the inner layer,” applicant respectfully asserts that the ‘618 patent is silent as to this feature. Rather, the ‘618 patent is directed to a flexible seat pad including a generally convex unitary flexible sheet member. The sheet member defines a number of pad bulges, integral to the sheet member, the pad bulges being resiliently compressible, and hinge lines that interconnect adjacent pairs of pad

bulges. To that end, the '618 patent provides no disclosure as to an outer layer covering less than all of an inner layer, as claimed.

Thus, applicant respectfully asserts that claim 1 is patentably distinguished from the '618 patent and that, therefore, the rejection of claim 1 is traversed.

Regarding the rejection of claims 23 and 29, applicant notes that these claims recite similar features as claim 1 and that, therefore, the rejections of claims 23 and 29 are traversed for similar reasons as set forth above with respect to claim 1.

Regarding the rejection of claim 42, it is noted that claim 42 recites a multi-layer seat pad for a cyclist garment, comprising an inner layer for contacting the cyclist, an outer layer for affixing to the garment, and a compressible, resilient middle layer disposed between the outer and inner layers. Here, the middle layer includes a thermal control material having thermal energy storage and insulative properties. These features are also not taught by the '618 patent.

Nevertheless, in rejecting this claim, the Examiner alleges that the '618 patent discloses an intermediate layer that is made of a thick compressible open cell foam such as polyurethane. Responsively and without addressing the merits (or lack thereof) of the Examiner's allegation, applicant again submits that the Examiner has provided no evidence that the '618 patent discloses the claimed middle layer including "a thermal control material," and that, in fact, the '618 is silent as to this feature.

Thus, applicant respectfully asserts that claim 42 is patentably distinguished from the '618 patent and that, therefore, the rejection of claim 42 is traversed.

Regarding the rejections of claims 2, 5-7, 15, 16 and 24, it is noted that these claims variously depend from claims 1 and 23 and that, therefore, these claims are patentably distinguished from the '618 patent for at least the reasons set forth above.

#### **Rejections under 35 U.S.C. § 103(a):**

On page 4 of the Office Action, claims 3, 4, 8, 12, 13, 30, 31, and 46 were rejected as allegedly being obvious in view of the '618 patent as combined with U.S. Patent Application Publication No. 2003/0163076 to Lukens. However, since these claims variously depend on claims 1, 29 and 42, which are patentably distinguished from the '618 patent, as noted above, and since Lukens fails to cure the defects of the '618 patent, applicant respectfully asserts that these rejections are traversed.

On page 5 of the Office Action, claims 9-11, 25-28, and 36-41 were rejected as allegedly being obvious in view of the '618 patent and Lukens as combined with U.S. Patent 6,928,665 to Yates. However, this Yates patent is not prior art with respect to the present application. Yates granted as a patent on August 16, 2005 based upon an application filed on April 8, 2004. The present application was filed on March, 2004, i.e., before the filing date of the Yates application.

As such, regarding the rejections of claims 9-11, which depend from claim 1, the rejection of claim 25, which recites similar features as claim 1, and the rejections of claim 26-28, which depend from claim 25, since the defects of the '618 patent and the reference to Lukens are uncured, claims 9-11 and 25-28 are patentably distinguished from any combinations of the references. Therefore, the rejections of claims 9-11 and 25-28 are traversed.

Regarding the rejection of claim 36, it is noted that claim 36 recites "perforations formed through the seat pad so as to traverse from the first side to the second side," which the Examiner has acknowledged as not being disclosed in the '618 patent or the reference to Lukens. Thus, since the acknowledged defects of the '618 patent and the reference to Lukens are uncured, claim 36, as well as dependent claims 37-41, are patentably distinguished from the references. Therefore, the rejections of claims 36-41 are traversed.

Lastly, on pages 6 and 7 of the Office Action, the remaining depending claims 14, 17-22, 32-35, and 43-45 were rejected as being obvious in view of the '618 patent taken singularly or in combination with U.S. Patent 5,637,389 to Colvin. However, it is noted that the reference to Colvin does not cure the defects of the '618 patent and that all of these claims variously depend from the above discussed novel and non-obvious independent claims 1, 29, and 42. Thus, the rejections of claims 14, 17-22, 32-35, and 43-45 are traversed for at least the reasons set forth above.

**Conclusion:**

In accordance with the foregoing, all of the claims are believed to be in condition for allowance, as is the application as a whole, and an early and favorable action to that effect is respectfully requested. If there are any charges with respect to this amendment, or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys. The Examiner is invited to contact Applicants' attorneys at the below telephone number regarding this Response or otherwise concerning the present application.

Respectfully submitted,

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